## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

THOMAS SMITH,	)
Petitioner,	
<b>v.</b>	) No. 3:04-cv-00775 ) Judge Nixon
JACK MORGAN, Warden,	) Judge Nixon
Respondent.	3
	ORDER

Pending before the Court are Petitioner Thomas Smith's Motion for Leave to File Supplemental Brief (Doc. No. 39) and Motion for Scheduling Order (Doc. No. 42) ("Motions"). Previously, this Court dismissed this action on the grounds that Petitioner had not exhausted his state-court remedies. (Doc. No. 25.) The United States Court of Appeals for the Sixth Circuit reversed the dismissal with regard to Petitioner's Eighth Amendment proportionality claim and remanded the matter to this Court for a ruling on the merits of that claim. (Doc. No. 33.)

The Court subsequently appointed counsel to represent Petitioner (Doc. No. 35), and Petitioner now seeks to file a supplemental brief, as this is his first opportunity to brief the issue through counsel. The Court agrees that Petitioner should have the chance to renew his argument with the assistance of his appointed attorney. Further, Petitioner seeks a scheduling order or similar order to set the course for completion of this action. Petitioner states that, in addition to any further briefing the Court may require, he does not believe Respondent Jack Morgan has filed a complete state court record. (Doc. No. 42 at 1.)

Petitioner's Motions are **GRANTED**. The Court will consider the supplemental briefing Petitioner has requested permission to file. Further, the Court **ORDERS** Respondent to file a

response within twenty-three days of the date of entry of this Order. With the response should be included any relevant portions of the record of the state court proceedings that Respondent has not previously filed before this Court. Petitioner may file a reply within ten days of the entry of Respondent's response.

It is so ORDERED.

Entered this \_\_\_\_\_ day of August, 2011.

JOHN T. NIXON, SENIOR JUDGE UNITED STATES DISTRICT COURT